

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Christine L. Porter

v.

Civil No. 10-cv-056-PB

FNU Thadani¹

ORDER

Pro se plaintiff, Christine L. Porter, has filed suit against her doctor, Dr. Thadani, seeking relief relating to a rash that she developed after she took the generic drug, topiramate. I construe the Complaint as also intending to state a claim against the state agency that administers the Medicaid program for the State of Vermont, for substituting the generic drug for the medication prescribed for her by Dr. Thadani.

The Complaint is before me for a preliminary review to determine, among other things, whether this Court's subject matter jurisdiction has been invoked, and whether the Complaint states any claim upon which relief might be granted. See 28 U.S.C. § 1915(e)(2)(B); United States District Court District of New Hampshire Local Rule ("LR") 4.3(d)(1)(B). The Complaint includes a number of attachments, which I construe for all

¹Plaintiff has not provided this court with the first name of defendant, Dr. Thadani. The acronym "FNU" stands for first name unknown.

purposes to be part of the Complaint. See Fed. R. Civ. P. 10(c).

For reasons set forth in the Report and Recommendation issued this date, the claim against Vermont Medicaid should be dismissed. The medical malpractice claim against Dr. Thadani should not proceed until Porter amends her complaint to show that this court has subject matter jurisdiction over the claim.

Accordingly, I hereby direct Porter to file an amended complaint. See LR 4.3(d)(1)(B)(ii) (magistrate judge may grant party leave to file amended pleading in accordance with directives). Porter must include facts in the amended complaint to show that her claim for damages against Dr. Thadani exceeds \$75,000, or her case may be dismissed for lack of subject matter jurisdiction. See 28 U.S.C. § 1332(a).

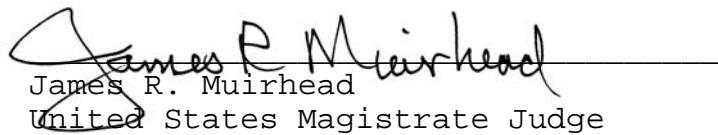
Conclusion

As set forth in a Report and Recommendation issued this date, the claim asserted against Vermont Medicaid should be dismissed.

Porter shall file an Amended Complaint, within 30 days of this Order, including factual allegations that establish the amount of damages, if any, that she is claiming to have suffered as a result of Dr. Thadani's medical malpractice.

Failure to file an Amended Complaint as directed may result in dismissal of the case.

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: March 15, 2010

cc: Christine L. Porter, pro se

JRM:nmd